

December 8, 2015

The Honorable Kurt Heise, Chair, House Committee on Criminal Justice  
Members of the House Committee on Criminal Justice

Re: HBs 4947-66 (Changing age of criminal responsibility from 17 to 18)

Representative Heise and Members of the Committee:

There have been discussions over decades about raising the age of criminal responsibility from 17 to 18. The rationale cited by the United States Supreme Court in Miller v Alabama regarding juvenile lifers most likely foreshadows the end to criminal responsibility below age 18 in the few states that so provide, like Michigan.

I commend the Chair and sponsors of HBs 4947-66 for being pro-active on this issue rather than waiting for a court to order the change in age without regard to related consequences.

But the raising of the age to 18 only begins the conversation.

What is the magnitude of the number of offenders who at age 17 commit what we call crimes if committed by adults? What is today a significant but relatively modest percentage of cases in circuit court and district court will markedly increase the juvenile caseload in the Family Division of Circuit Court. How will judicial resources (judges and referees) be reallocated? How many are likely to receive probation and how many are likely to need out-of-home placement? Are services, treatment options, residential options, and even secure placements in place to handle the increased number of juveniles coming into the juvenile justice system?

Fortunately Michigan does not have a large number in prison under age 18 but those who are got there because of serious crimes or repeat offenses. They are not non-violent, first-time property offenders; they earned their way into prison. (Remember that we divert about 85% of convicted felons from prison at initial sentencing. Does that percentage hold for age-17 offenders or is that percentage even higher for that age?) If a goal of the package is to get all minors out of jail and prison, where will those age-17 serious offenders be placed when jurisdiction is raised to age 18? Will the now-closed juvenile facilities at Whitmore Lake and Green Oaks need to be re-opened? Moreover, we now have in prison several hundred inmates who committed felonies while age 17. Where and for how long will those types of offenders be placed in the future? Will there be a greater use of juvenile waivers and a blended sentence for violent offenses – initial placement in a juvenile facility and then transferred to prison at age 18?

The foregoing set of questions focus on disposition after adjudication or plea. But where will age-17 offenders be placed prior to adjudication, especially those accused of serious felonies? (The vast majority of age-17 offenders will be released to parents, so this question relates to a lesser number charged with more serious offenses.) Some of these bills would exclude all juveniles (minors) from jail. Placement of young offenders in jail for any period – even with supposed sight and sound separation – has been a controversial solution that juvenile justice advocates have fought against for decades. A bad solution – but for the lack of a better alternative. The reason why it survived was a lack of alternatives in rural areas of the state that did not had adequate alternatives in the county. Maybe that has changed, but you need to find out. Ask your own judges and local officials. When last wrestled with, the alternative was to transport the youth a considerable distance, a solution with 2 negatives: With limited patrol officers (county or MSP), you are pulling the car/officer off-line for several hours – and that

situation is far worse today than 20 years ago. If family ties are important, placing a youth at a distant location negatively impacts the ability of family to visit. If the Committee and Legislature are convinced that available alternatives exist, then the ban on jail placement is obvious.

Regardless of how you resolve the main issue and related concerns, almost certainly the Legislature faces a Headlee mandated-cost issue. There is a package of bills supported by MAC in the Senate that wants to make it tougher for the Legislature to impose financial burdens on local government. This is such an issue – and HFA analyses to date do not give you a good measure of prediction as to how much this package will cost. While arrests and prosecution will remain a local function and expense and so may probation, disposition of age-17 juvenile offenders will transfer out-of-home placement costs from the state (MDOC) to the county. The proposed change in the child care fund formula only addresses part of that picture. The child care fund is not a full-cost reimbursement mechanism – the county faces unreimbursed costs for more secure placements.

And speaking of funding: One surely hopes that the Legislature will not do to juvenile justice what it has done for mental health – closed institutions but never provided the funding for the alternative treatment and services needed to help that population.

This package provides only 90 days between enactment and full implementation. I question whether that is sufficient time. For this change in policy to work right, there needs to be some advanced planning time to facilitate the transition and adjust resources accordingly.

A quick note on juvenile waivers: The proposal in HBs 4955-56 reverts back closer to criteria before several statutes changed waiver criteria and added automatic waivers and blended sentences. The problem that prompted the revisions two decades ago was the propensity in Wayne County for judges to deny waiver requests by the prosecutor in homicide cases – about half waived, other half not. (Less of problem out-state.) With the prosecution waiver option still available in homicide cases, HBs 4955-56 criteria should not bring back the original problem. But note: One of weaknesses of the traditional waiver criteria is that the court knows less about the case and juvenile at the beginning of the case than at disposition.

There is a touch of irony in this package unless changes are made to other laws:

MDOC reports that a large percentage of age-17 offenders are now placed on HYTA probation. Upon successful conclusion, the individual has no conviction on his or her record. Under this package, age-17 offenders will lose that benefit. Juvenile records last longer.

As the Michigan Indigent Defense Commission moves toward improving indigent defense services for adult offenders, HB 4953 would take that benefit away from age-17 offenders.. (Confining MIDC services to adult offenders was one of the hard choices the Legislature made in passing 2013 PA 93.)

Respectfully,

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